



An Rialálaí
Carthanas
Charities
Regulator

Safeguarding Guidance for Charitable Organisations working with Children



January 2020



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LEGAL DISCLAIMER

This document is intended to provide general information in relation to applications for registration under section 39 of the Charities Act 2009. It is not, nor is it intended to be, a definitive statement on the laws, standards, policies and procedures applicable to the safeguarding of children. Information contained in this document is taken from child protection and safeguarding information resources provided by the Department of Children and Youth Affairs and Tusla Child and Family Agency. Where a charity's activities include working with children, any queries relating to the areas of risk assessment, safety checks and safeguarding should be directed to the appropriate State agency. Organisations may wish to obtain their own independent legal advice when making decisions relating to any of the matters referred to in this document.

1

Introduction

Where the activities of a charitable organisation (“charity”) include working with vulnerable people, it is important that the charity has adequate risk assessment procedures, safety checks and safeguards in place that meet requirements under Irish law and national standards, policies and procedures.

Vulnerable people are described in the Charities Act 2009 as including the aged, children and young people, the sick and disabled.

While the Charities Regulator’s statutory remit does not extend to the safeguarding of vulnerable people, the issue of risk assessment procedures, safety checks and safeguarding nevertheless arises in the context of applications for registration in the Register of Charities and required standards of governance within registered charities.

Registration Requirements

Further to section 39 of the Charities Act 2009, the Charities Regulator has established a Register of Charities, which lists all registered charities and provides information on them including each charity’s trustees and the charitable purpose of each charity. The Register of Charities is publicly available and can be accessed through the Charities Regulator’s website: www.charitiesregulator.ie

A charity that intends to operate or carry on activities in the State is required to apply to the Charities Regulator for registration in the Register of Charities.

Section 39(5) of the Charities Act 2009 outlines what an application for registration on the Register of Charities must consist of, which includes a requirement that an application must –

“specify the risk assessment procedures, safety checks and safeguards employed by the charitable organisation where its activities include working with vulnerable people (including the aged, children and young people, the sick, disabled and handicapped)”¹

Applicants for charitable status must provide these documents when submitting an application form. Applicants must ensure that the specific risk assessment procedures, safety checks and safeguards meet the applicable legal requirements and standards for both the planned and actual activities undertaken and are independently verified.

¹ Paragraph (l) of section 39(5) of the Charities Act 2009

Required Standards of Governance

In November 2018, the Charities Regulator published the Charities Governance Code. The Charities Governance Code sets out 6 core principles and 32 standards with which all registered charities are expected to comply along with 17 additional standards for more complex charities.

Principle 4 of the Charities Governance Code, which relates to the principle that charity trustees must exercise control of their charity provides as follows:

“All charities, no matter what their complexity, must abide by all legal and regulatory requirements that are relevant to the work they do. The charity trustees are responsible for making sure this happens”.

The Core Standards, which fall under the principle of exercising control, provide that charities are required to do a number of things to apply the principle including the following:

- › “Find out the laws and regulatory requirements that are relevant to your charity and comply with them”², and
- › “Identify any risks your charity may face and how to manage these”.³

The additional standards, which fall under the principle of exercising control and apply to more complex charities, provide that such charities should do the following:

- › “Have written procedures to make sure that you comply with all relevant legal and regulatory requirements” (additional standard 4.7); and
- › “Consider adopting additional good practice standards that are relevant to the particular work that your charity does” (additional standard 4.9).

In summary, the Governance Code makes it clear that charities must abide by all legal and regulatory requirements and have written procedures in place for doing so. Charities must also identify risks and how to manage them, and adopt good practice standards. These requirements apply in all areas, including where a charity works with vulnerable people.

It is essential that where a charity’s activities include working with vulnerable people that its charity trustees and all those working and volunteering with the charity are cognisant of applicable safeguarding requirements, and have the necessary risk assessment procedures, safety checks and safeguards in place.

2 Core Standard 4.2

3 Core Standard 4.5

Charities Providing Services Overseas

For organisations intending to provide services to vulnerable people overseas, the Charities Regulator will, when considering an application for registration from such an organisation, consider the requirement to specify risk assessment procedures, safety checks and safeguards by reference to national laws and any national guidance, policies and procedures that apply in the Republic of Ireland. Charities must however ensure that they also comply with the requirements regarding the protection of vulnerable people in place in the country in which they are providing or will provide a service. Charities should seek independent advice if they are unsure in relation to their obligations.

Purpose of this Guidance Note

It is important to note that this guidance is for charities working with **children**. The Charities Regulator has produced separate guidance for charities whose activities include working with vulnerable persons (adults), which is available on the website of the Charities Regulator at www.charitiesregulator.ie.

The purpose of this guidance note is to provide a broad overview of safeguarding principles, key legislative requirements and relevant national guidance, policies and procedures relating to the protection and welfare of children.

This guidance also identifies resources available from other agencies to ensure that safeguards are in place that adequately protect children. This will assist organisations wishing to apply for registration on the Register of Charities and registered charities seeking to meet the standards set out in the Charities Governance Code.

This guidance document does not constitute a definitive statement on the laws, standards, policies and procedures applicable to the safeguarding of children. Information contained in this document is taken from child protection and safeguarding information resources provided by the Department of Children and Youth Affairs and Tusla Child and Family Agency. Where a charity's activities include working with children, any queries relating to the areas of risk assessment, safety checks and safeguarding should be directed to the appropriate State agency.

2

Safeguarding Principles – Children

Child welfare and protection policy is based on a legal framework provided primarily by the Child Care Act 1991 and the Children First Act 2015. The policy and practice that applies in this area is outlined in guidance issued by the Department of Children and Youth Affairs pursuant to section 6 of the Children First Act 2015.

Children First National Guidance for the Protection and Welfare of Children, 2017⁴ provides guidance for organisations that provide relevant services to children on keeping children safe from harm while availing of a service.

The best interests of the child are the paramount consideration⁵. A provider of a relevant service shall ensure, as far as practicable, that each child availing of the service from the provider is safe from harm while availing of that service⁶.

There are a number of key principles of child protection and welfare that inform both Government policy and best practice for those dealing with children⁷.

4 Children First National Guidance for the Protection and Welfare of Children, Department of Children and Youth Affairs, 2017

5 Children First Act 2015 Part 1(7)

6 Children First Act 2015 Part 2 (10)

7 Children First National Guidance for the Protection and Welfare of Children, Department of Children and Youth Affairs, 2017 (issued under Section 6 of the Children First Act 2015)

These key principles are;

- › The safety and welfare of children is everyone's responsibility.
- › The best interests of the child should be paramount.
- › The overall aim in all dealings with children and their families is to intervene proportionately to support families to keep children safe from harm.
- › Interventions by the State should build on existing strengths and protective factors in the family.
- › Early intervention is key to getting better outcomes. Where it is necessary for the State to intervene to keep children safe, the minimum intervention necessary should be used.
- › Children should only be separated from parents/guardians when alternative means of protecting them have been exhausted.
- › Children have a right to be heard, listened to and taken seriously. Taking account of their age and understanding, they should be consulted and involved in all matters and decisions that may affect their lives.
- › Parents/guardians have a right to respect, and should be consulted and involved in matters that concern their family.
- › A proper balance must be struck between protecting children and respecting the rights and needs of parents/guardians and families. Where there is conflict, the child's welfare must come first.
- › Child protection is a multiagency, multidisciplinary activity. Agencies and professionals must work together in the interests of children.

3

Core Requirements for Organisations Working with Children

The aim of this part of the guidance is to help all charities working with children and young people to create a culture of safety that promotes the welfare of children and young people availing of their services. Charities which provide a 'relevant service' as defined in the Children First Act 2015 will have specific statutory obligations under that legislation. One of the main objectives of the Children First Act 2015 is to ensure that organisations keep children safe from harm while availing of services. The legislation and associated guidance relate to the obligations of relevant service providers to prevent, as far as practicable, deliberate harm or abuse to the children availing of their services. While it is not possible to remove all risk, organisations should put in place policies and procedures to manage and reduce risk to the greatest possible extent.

The Children First Act 2015 places specific obligations on organisations which provide services to children, including the requirement to:

- › Keep children safe from harm while they are using the service.
- › Carry out a risk assessment to identify whether a child or young person could be harmed while receiving a service.
- › Develop a Child Safeguarding Statement that outlines the policies and procedures which are in place to manage the risks that have been identified.
- › Appoint a relevant person to be the first point of contact in respect of the organisation's Child Safeguarding Statement.

The Children First Act 2015 imposes deadlines on organisations in both carrying out a risk assessment and preparing a Child Safeguarding Statement. Charities which provide a relevant service to children must comply with the requirements within three months from the date the service commenced.

Relevant Services

The organisations that have statutory responsibilities under the Children First Act 2015 are those that provide a relevant service to children.

An organisation should consult the Children First Act 2015 to establish if the organisation is a provider of a relevant service. The definition of provider can be found within section 8 of the Children First Act 2015. The list of relevant services can be found in Schedule 1 to the Children First Act 2015.

As set out in the Children First National Guidance, to qualify as a provider of a relevant service under the Act, the service provider must employ at least one other person to provide that service. In effect, this means that types of activity and services provided by persons who work alone and do not employ another person (e.g. tutors who provide one-to-one tuition or childminders) are exempt under the Act. Activities which are undertaken in the course of a family or personal relationship for no commercial benefit, for example a grandparent who minds their grandchild or the person who gives the neighbour's children a lift to school, are also exempt.



4

Risk Assessment

Under the Children First Act 2015, a provider of a relevant service must undertake a risk assessment. This considers the potential for harm to children while they are in the organisation's care. It should be noted that risk in this context is the risk of abuse and not general health and safety risk. Harm has a specific definition which is set out below under the heading "Understanding what risks to assess".

The organisation then uses this risk assessment to draft a Child Safeguarding Statement to outline how these risks will be managed.

A risk assessment is an exercise where the organisation examines all aspects of the service from a safeguarding perspective to establish whether there are any practices or features of the service that have the potential to put children at risk.

The risk assessment process is intended to enable the organisation to:

- › Identify potential risks
- › Develop policies and procedures to minimise risk by responding in a timely manner to potential risks
- › Review whether adequate precautions have been taken to eliminate or reduce these risks

Understanding what Risks to Assess

Section 11(1)(a) of the Children First Act 2015 defines risk as "any potential for harm to a child while availing of the service." Section 2 of the Children First Act 2015 defines harm as follows:

"harm means in relation to a child –

- a) *Assault, ill-treatment or neglect of the child in a manner that seriously affects or is likely to seriously affect the child's health, development or welfare, or*
- b) *Sexual abuse of the child, whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances or otherwise."*

5 Safeguarding

The Children First Act 2015 requires organisations that provide a relevant service to prepare a Child Safeguarding Statement. This is a written statement that specifies the service being provided and the principles and procedures to be observed in order to ensure, as far as practicable, that a child availing of the service is safe from harm. The provider should ensure that the Child Safeguarding Statement has due regard to this Guidance and any other child protection guidelines issued by the Minister for Children and Youth Affairs, or any guidelines issued by Tusla concerning child safeguarding statements under section 11(4) of the Children First Act 2015.

What the Child Safeguarding Statement Should Contain

As outlined above, the Children First Act 2015 places obligations on organisations that provide relevant services to children. These obligations are:

- › To keep children safe from harm while they are using the service [section 10]
- › To carry out a risk assessment to identify whether a child or young person could be harmed while using the service [section 11(1)(a)] and
- › To develop a Child Safeguarding Statement [section 11(3)] which must include both the written risk assessment and the procedures that are in place to:
 - Manage any risk identified
 - Investigate an allegation against any staff member about any act, omission or circumstance in respect of a child availing of the service
 - Select and recruit staff who are suitable to work with children
 - Provide information and training to staff on child protection and safeguarding issues
 - Enable staff members, whether mandated persons or otherwise, to make a report to Tusla in accordance with the Act or any guidelines issued by the Minister for Children and Youth Affairs
 - Maintain a list of persons in the organisation who are mandated persons under the Act
 - Appoint a relevant person in the organisation for the purposes of the Act

The Child Safeguarding Statement should also provide an overview of the measures that an organisation has in place to ensure that children are protected from harm. It may also refer to more detailed policies which can be made available on request. Further help on developing a Child Safeguarding Statement is available on the Tusla website (www.tusla.ie).

The Child Safeguarding Statement must be reviewed every two years, or sooner if there has been a material change in any of the issues to which it refers.

Making the Child Safeguarding Statement Available

Upon completion, the organisation must circulate the Child Safeguarding Statement to all staff members. The organisation must also display the Child Safeguarding Statement publicly and make it available to parents and guardians, Tusla and members of the public upon request.

Register of Non-Compliance

There is provision in the Children First Act 2015 for Tusla to establish and maintain a register of non-compliance for service providers who fail to provide a copy of the Child Safeguarding Statement to Tusla when requested to do so. Under the Act, Tusla must make the register available for inspection by the public at all reasonable times at its principal office.

6 Safety Checks

In line with the Charities Act 2009, for the purposes of registration, the application must specify safety checks employed by the charitable organisation. The Charities Regulator considers safety checks to include the policy and procedures for child protection and welfare, which is declared as being consistent with Children First National Guidance 2017 and include at a minimum:

- › Dealing with child protection concerns (including the management of allegations of abuse against workers/volunteers)
- › Reporting child protection concerns
- › Working safely with children
- › Recruiting and managing staff / volunteers
- › Roles and responsibilities (including mandated persons and the relevant person)
- › Child safeguarding information and training
- › Involving parents and children
- › Implementing and reviewing the safeguarding strategies

Garda Vetting of Staff/Volunteers

Statutory obligations on employers in relation to Garda vetting requirements for persons working with children and vulnerable persons are set out in the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012–2016.

The National Vetting Bureau of An Garda Síochána issues vetting disclosures to organisations employing people who work in a full-time, part-time, voluntary or student placement basis with children and/or vulnerable persons. The National Vetting Bureau does not decide on the suitability of any person to work with children and vulnerable persons. Rather, in response to a written request for vetting, the National Vetting Bureau releases a vetting disclosure which can contain details of convictions or pending prosecutions together with other specified information on the person to be vetted to the prospective recruiting organisation.

Decisions on suitability for recruitment rest at all times with the recruiting organisation and the results of vetting should form only one part of the recruitment decision.

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Resource List – Children

<https://www.tusla.ie/children-first/>

The information contained in this guidance has been sourced from Tusla, Child and Family Agency publications (www.tusla.ie).

Tusla, Child and Family Agency website provides information for organisations working with children and families regarding child protection and welfare and are available to download.

Publications, Support Documents, Sample Templates and Forms

- › Children First Act 2015
- › Children First National Guidance for the Protection and Welfare of Children, 2017
- › Addendum to Children First National Guidance for the Protection and Welfare of Children – Online Safety
- › A Guide for the Reporting of Child Protection and Welfare Concerns
- › Best Practice Principles for Organisations in Developing Children First Training Programmes
- › Guidance on Developing a Child Safeguarding Statement
- › Mandated Assisting Protocol for Tusla Staff
- › Child Safeguarding: A Guide for Policy, Procedure and Practice
- › Joint Working Protocol for An Garda Síochána/Tusla- Child and Family Agency Liaison
- › The Children First Act and Mandated Reporting- What it means for Foster Carers
- › Child Safeguarding Statement Sample Template
- › Child Protection and Welfare Report Form (CPWRF)
- › CPWRF Guidance Notes
- › Retrospective Abuse Report Form (RARF)
- › RARF Guidance Notes

Tusla has developed a web portal for professionals to securely submit Child Protection and Welfare Report Forms (CPWRF). To use the portal, organisations will first need to create an account. There is a short user guide available on the Tusla website to assist those making their first report using the web portal.

The Health Information and Quality Authority (HIQA) has national standards for the protection and welfare of children (2012) and these can be accessed on their website www.hiqa.ie.

Information and resources are also available on the Department of Children and Youth Affairs website www.dcy.gov.ie

Legislation information is available on www.gov.ie

Appendix - Relevant Legislation for Organisations Working with Children

Children First National Guidance (2017), sets out a number of key pieces of legislation that relate to child welfare and protection. Table 1 below gives a brief overview of relevant legislation. It is not intended as legal opinion or advice and, if in doubt, you should consult the original legislation.

Table 1

<p>Children First Act 2015</p>	<p>The Children First Act 2015 is an important addition to the child welfare and protection system as it will help to ensure that child protection concerns are brought to the attention of Tusla without delay. The Act provides for mandatory reporting of child welfare and protection concerns by key professionals; comprehensive risk assessment and planning for a strong organisational culture of safeguarding in all services provided to children; a provision for a register of non-compliance; and the statutory underpinning of the existing Children First Interdepartmental Implementation Group which promotes and oversees cross-sectoral implementation and compliance with Children First.</p>
<p>Child Care Act 1991</p>	<p>This is the key piece of legislation which regulates childcare policy in Ireland. Under this Act, Tusla has a statutory responsibility to promote the welfare of children who are not receiving adequate care and protection. If it is found that a child is not receiving adequate care and protection, Tusla has a duty to take appropriate action to promote the welfare of the child. This may include supporting families in need of assistance in providing care and protection to their children. The Child Care Act also sets out the statutory framework for taking children into care, if necessary.</p>

<p>National Vetting Bureau (Children and Vulnerable Persons) Acts 2012–2016</p>	<p>Under these Acts, it is compulsory for employers to obtain vetting disclosures in relation to anyone who is carrying out relevant work with children or vulnerable adults. The Acts create offences and penalties for persons who fail to comply with their provisions. Statutory obligations on employers in relation to Garda vetting requirements for persons working with children and vulnerable adults are set out in the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012–2016. Schedule 1 Part 1 sets out the relevant work or activities relating to children.</p>
<p>Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012</p>	<p>Under this Act, it is a criminal offence to withhold information about a serious offence, including a sexual offence, against a person under 18 years or a vulnerable person. The offence arises where a person knows or believes that a specified offence has been committed against a child or vulnerable person and he or she has information which would help arrest, prosecute or convict another person for that offence, but fails without reasonable excuse to disclose that information, as soon as it is practicable to do so, to a member of An Garda Síochána. The provisions of the Withholding legislation are in addition to any reporting requirements under the Children First Act 2015.</p>
<p>Criminal Law (Sexual Offences) Act 2017</p>	<p>This Act addresses the sexual exploitation of children and targets those who engage in this criminal activity. It creates offences relating to the obtaining or providing of children for the purposes of sexual exploitation. It also creates offences of the types of activity which may occur during the early stages of the predatory process prior to the actual exploitation of a child, for example, using modern technology to prey on children and making arrangements to meet with a child where the intention is to sexually exploit the child. The Act also recognises the existence of underage, consensual peer relationships where any sexual activity falls within strictly defined age limits and the relationship is not intimidatory or exploitative.</p>

Criminal Justice Act 2006	<p>Section 176 of this Act created an offence of reckless endangerment of children. This offence may be committed by a person who has authority or control over a child or abuser who intentionally or recklessly endangers a child by:</p> <ol style="list-style-type: none">1. Causing or permitting the child to be placed or left in a situation that creates a substantial risk to the child of being a victim of serious harm or sexual abuse; or2. Failing to take reasonable steps to protect a child from such a risk while knowing that the child is in such a situation.
Protections for Persons Reporting Child Abuse Act 1998	<p>This Act protects you if you make a report of suspected child abuse to designated officers of Tusla, the Health Service Executive (HSE) or to members of the Gardaí as long as the report is made in good faith and is not malicious. Designated officers also include persons authorised by the Chief Executive Officer of Tusla to receive and acknowledge reports of mandated concerns about a child from mandated persons under the Children First Act 2015. This legal protection means that even if you report a case of suspected child abuse and it proves unfounded, a plaintiff who took an action would have to prove that you had not acted reasonably and in good faith in making the report. If you make a report in good faith and in the child's best interests, you may also be protected under common law by the defence of qualified privilege. You can find the full list of persons in Tusla and the HSE who are designated officers under the 1998 Act, on the website of each agency (www.tusla.ie and www.hse.ie).</p>

Document Reference No SE GLS 8.2.1 020

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